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Attorney for Plaintiff
HERMINIA LORENZO CRUZ

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HERMINIA LORENZO CRUZ,

Plaintiff,

v.

INTERNATIONAL COLLECTION
CORPORATION, a California corporation,
and CHARLES D. HENDRICKSON,
individually and in his official capacity,

Defendants.

Case No. C08-00991-JF-RS

**REPLY MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
WRITTEN DISCOVERY RESPONSES
AND PRODUCTION OF
DOCUMENTS**

[Fed. R. Civ. P. 37(a)]

Date: September 17, 2008
Time: 9:00 a.m.
Judge: Honorable Richard Seeborg
Courtroom: 4, 5th Floor
Place: 280 South First Street
San Jose, California

POINTS AND AUTHORITIES

Defendants have utterly failed to comply with the Federal Rules of Civil Procedure in this case. Defendants did not appropriately respond to Plaintiff's discovery requests in the first instance, then Defendants did not meet and confer despite Plaintiff's good faith attempts to do so. Now Defendants have utterly failed to respond in any substantive way to Plaintiff's Motion to Compel — completely ignoring the merits of the motion. Defendants have repeatedly demonstrated that responding to Plaintiff's discovery is not a priority, and Defendants have wasted the resources of this Court and Plaintiff's counsel by failing to meet their burden under the Federal Rules of Civil Procedure.

The Opposition which Defendants filed in this case does not address in any substantive way

1 Plaintiff's discovery requests or the issues raised in her Motion to Compel. Instead, Defendants cite
 2 inapplicable state law and complain that Plaintiff did not meet and confer enough before filing her
 3 Motion to Compel. This simply isn't true. Plaintiff attempted to meet and confer in good faith with
 4 Defendants by first sending a letter, a recognized and acceptable medium for a meeting and
 5 conferring regarding discovery disputes. Plaintiff's meet and confer letter provided authority for
 6 Plaintiff's position that ICC's discovery objections were without merit and which explained the
 7 basis for Plaintiff's discovery requests.¹ Plaintiff indicated in the letter that failure to respond would
 8 necessitate filing a motion to compel.² Thereafter, Defendants expressed an interest in a telephonic
 9 conference on July 25, 2008, then rescheduling it, then never placed the telephone call to Plaintiff's
 10 counsel at the appointed time on July 28, 2008. Plaintiff has attempted to meet and confer and
 11 continues to so to this day. On two occasions between July 29, 2008, and the filing of this motion
 12 in the evening of August 13, 2008, Plaintiff's counsel attempted to contact Defendants counsel by
 13 telephone. On one occasion the call was not answered and on the other occasion a message was left
 14 with Mr. Rothman's staff. No return call was received. If Defendants really wanted so badly to
 15 discuss these issues by telephone, why can't their counsel pick-up the telephone and place the call?
 16 Simply put, Defendants have ignored and continue to ignore Plaintiff's attempts to meet and confer,
 17 just as Defendants failed to substantively respond to the issues raised in Plaintiff's Motion to
 18 Compel. Therefore, Plaintiff was left with no alternative but to file this Motion to Compel, and seek
 19 the assistance of this Court in obtaining the requested information and documents.

20 In this and a companion case,³ Defendants have repeatedly evaded and gamed the meet and
 21 confer process. The meet and confer process is not designed to allow an obstructionist party to
 22 continue their obstructionist conduct, nor does it excuse them for failing to follow the Federal Rules

24 ¹ Declaration of Raeon Roulston in Support of Motion to Compel Written Discovery
 25 Responses and Production of Documents (Doc. 23) ¶ 3.

26 ² Declaration of Raeon Roulston in Support of Motion to Compel Written Discovery
 27 Responses and Production of Documents (Doc. 23) Exhibit "5."

28 ³ *Bretana v. International Collection Corporation, et al.*, Northern District Case No. C07-05934-JF-HRL.

1 of Civil Procedure in the first place. If Defendants were dealing with these issues in good faith, they
2 would stop these shenanigans and respond to Plaintiff's discovery requests as required by the rules.

3 By refusing to provide Plaintiff with the information and documents requested in discovery,
4 Defendants have hindered Plaintiff's ability to prosecute this case. There is a scheduled Mediation
5 in this case, and lack of discovery responses and documents from Defendants make it impossible
6 to properly evaluate this case and make the most of the Court sponsored Mediation processes.
7 Moreover, it is impractical to determine the scope of questioning, the estimated length and
8 scheduling of depositions without the documents requested or a clear statement that the requested
9 documents do not exist.

10 Defendants have hindered Plaintiff's prosecution of this case, and have wasted the resources
11 of this Court, by failing to substantively respond to Plaintiff's discovery. Therefore, Plaintiff
12 respectfully requests that this Court compel Defendants to respond to Plaintiff's discovery fully and
13 completely, and to produce the documents requested.

14
15 CONSUMER LAW CENTER, INC.

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17 Dated: September 3, 2008

18 By: /s/ Fred W. Schwinn
19 Fred W. Schwinn, Esq.
20 Attorney for Plaintiff
21 HERMINIA LORENZO CRUZ
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